In the High Court of Punjab and Haryana at Chandigarh

RSA No. 966 of 1997 (O&M)
Date of decision: 02.06.2011

Chander Bhan **.....Appellant**

Versus

Chandan and others **.....Respondents**

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr.Om Parkash Sharma, Advocate and
Mr.Bikram Chaudhary, Advocate for the appellant.
Mr.R.S.Tacoria,Advocate for the respondents.

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SABINA, J.

Plaintiff had filed a suit for possession.

The case of the plaintiff, in brief, was that the suit property was owned by Munshi to the extent of 1/4th share i.e. 116 kanals 3 marlas out of the total land measuring 464 kanals 11 marlas. Munshi died in the year 1966. The pedigree table, as shown in para 3 of the plaint, is as under:-

Lijju
|
Sheda
|
Munshi deceased

| | | |

On the pleadings of the parties, following issues were framed by the trial Court:-

"1.Whether the plaintiff is entitled for the possession of the suit land on the grounds mentioned in the plaint?OPP

2.Whether the suit is barred by the principle of Order 23 rule 1(2)(d) of CPC?OPD

3.Whether the suit is bad for non joinder of necessary parties?OPD

4.Whether the suit for possession is not maintainable in the eyes of law?OPD

5.Whether the suit is bad for misjoinder of necessary parties?OPD

6.Whether the plaintiff has no locus standi to file the present suit?OPD

7.Whether the plaintiff has no cause of action to file the present suit?OPD

8.Relief."

The Senior Sub Judge, decreed the suit of the plaintiff vide judgment and decree dated 27.11.1992 for possession to the extent of 1/8th share out of the suit land. Aggrieved by the said judgment and decree, defendants No. 2 and 5 preferred an appeal and the Additional District Judge vide judgment and decree dated 28.1.1997 allowed the appeal and, consequently, dismissed the suit of the plaintiff. Hence, the present appeal by the plaintiff.

Learned counsel for the plaintiff has submitted that Bhullan was daughter of Munshi and at the time of sanctioning of mutation after his death, she was ignored qua her share in the property of her

father. Plaintiff was son of Bhullan, daughter of Munshi and was entitled to get possession of the share of Bhullan out of the suit property. The suit filed by the plaintiff on the basis of inheritance could not be said to be barred by limitation. Since the plaintiff had become a co-sharer in the suit property, the defendants could not raise the plea of adverse possession. In support of his arguments, learned counsel has placed reliance on **Sant Ram Nagina Ram vs. Deva Ram Nagina Ram** and others AIR 1961 PB 528 as under:-

> "(1) A co-owner has an interest in the whole property and also in every parcel of it.
>
> (2) Possession of joint property by one co-owner, is in the eye of law, possession of all even if all but one are actually out of possession.
>
> (3) A mere occupation of a larger portion or even of an entire joint property does not necessarily amount to ouster as the possession of one is deemed to be on behalf of all.
>
> (4) The above rule admits of an exception when there is ouster of a co-owner by another. But in order to negative the presumption of joint possession on behalf of all, on the ground of ouster, the possession of a co- owner must not only be exclusive but also hostile to the knowledge of the other as, when a co-owner openly asserts his own title and denies that of the other.
>
> (5) Passage of time does not extinguish the right of the co-owner who has been out of possession of the joint property except in the event of ouster or abandonment.
>
> (6) Every co-owner has a right to use the joint property in a

husband like manner not inconsistent with similar rights of other co-owners.

(7) Where a co-owner is in possession of separate parcels under an arrangement consented to by the other co-owners, it is not open to any one to disturb the arrangement without the consent of others except by filing a suit for partition.

(8) The remedy of a co-owner not in possession, or not in possession of a share of the joint property, is by way of a suit for partition or for actual joint possession, but not for ejectment. Same is the case where a co-owner sets up an exclusive title in himself.

9.Where a portion of the joint property is by common consent of the co-owners reserved for a particular common purpose, it cannot be diverted to an inconsistent user by a co-owner; if he does so, he is liable to be ejected and the particular parcel will be liable to be restored to its original condition. It is not necessary in such a case to show that special damage has been suffered. Case law reviewed."

Learned counsel has also placed reliance on **Karbalai Begum vs. Mohd.Sayeed and another** AIR 1981 Supreme Court 77 wherein it has been held as under:-

"It is well settled that mere non-participation in the rent and profits of the land of a co-sharer does not amount to an ouster so as to give title by adverse possession to the other co-sharer in possession. Indeed even if this fact is admitted, then the legal position would be that the co-

sharers in possession would become constructive trustees on behalf of the co-sharer who is not in possession and the right of such co-sharer would be deemed to be protected by the trustees."

Learned counsel for the respondents,during the course of arguments, has conceded that the suit filed by the plaintiff could not be said to be barred by limitation as it was based on inheritance. Learned counsel for the respondents has submitted that the respondents had perfected their title by way of adverse possession and hence, the suit filed by the plaintiff was liable to fail. In support of his arguments, learned counsel has placed reliance on **Gurcharan Singh and others vs. Surjit Kaur and others** 2005(3) RCR (Civil) 628 wherein it has been held as under:-

"The argument of the learned counsel that there is delay in challenging the mutation has not impressed me in view of the fact that under Article 65 of the Schedule appended to the Limitation Act, 1963, no period of limitation has been prescribed for establishing the rights by a heir. The only way to defeat such a suit is the proof by defendant that they have perfected their title by adverse possession. The controversy has been concluded by a Division Bench judgment of this Court in **Mohinder Singh v. Kashmira Singh,** 1985 RRR 399 (P&H): 1985 PLJ 82 where earlier view to the contrary in the case of **Narinder Singh and others v. Chanan Singh and others, 1983 Current Law Journal 432** was overruled. Similar view has been held by

this Court in the case of **Pahalwan Singh v. Lado Bibi,** 2001(3) RRR 481 (P&H):2001(2) PLJ 54. A reference in this regard may be made to the observation of this Court in para 14 of the judgment in Pahalwan Singh's case which reads as under:-

"Plaintiffs' suit was within time as cause of action to them arose when Pahalwan Singh chose to act adversely to the interest of Sucha Singh and Jit Singh. Pahalwan Singh got the mutation entered on 18.3.1982. They got cause of action on 20.4.1984 when the mutation was sanctioned. Prior to 18.3.1982, the plaintiffs were believing the inheritance to have devolved upon them equally. There is no limitation so far as suit based on inheritance is concerned. It is for other party to plead and prove adverse possession. In this case, the adverse act commenced on 18.3.1992 or on 20.1.1984 and, therefore, suit instituted in 1992 is well within limitation."

Therefore, I have no hesitation to reject the contention raised on behalf of the defendant-appellants.

For the reasons recorded above, this appeal fails and the same is dismissed.

Appeal dismissed.

Learned counsel has also placed reliance on **Mohinder Singh died and Rep. By his LRs and ANR. vs. Kashmira Singh** 1985 PLJ 82 wherein it has been held as under:-

"After hearing the learned counsel for the parties, I find force in the contention of the learned counsel for the

respondent. It is well established principle of law that inheritance does not remain in abeyance and the heirs after the death of the last male holder succeed to the property of the deceased in accordance with law. Kashmira Singh, being the son of Niranjan Singh, deceased was entitled to 1/3rd share in the land in dispute. After the death of Niranjan Singh, he was not required to file any suit for possession on the basis of inheritance. He had become full owner of his share in the property on the death of the last male holder. For establishing his right as an heir, he was not required to file a suit. However, a situation may arise when the heir is not in possession of the property inherited. In that event a suit for possession may have to be filed and on contest the same may fail on the defendant proving that he has perfected his title by adverse possession. It is such type of suit which is governed by the provisions of Article 65 of the Limitation Act. In this view of the matter, with respect, I find that the view taken by R.N.Mittal,J. In Naginder Singh's case (supra) that it is well settled that a suit for possession on the ground of inheritance should be filed within a period of twelve years from the date when the inheritance opens, does not lay down correct law. The decisions to which reference has been made in para 9 of the judgment by the learned Judge, do not lay down any such rule. On the other hand, in all those decisions it was the plea of adverse possession of the defendants which was upheld. Thus, I hold that no period of limitation is prescribed for filing a suit

for possession on the basis of inheritance."

In the present case, the question that requires consideration is as to whether the defendants had become owners of the suit land by way of adverse possession.

Before the First Appellate Court, it was not disputed that the plaintiff-Chander Bhan was entitled to share in the suit land being son of Bullhan, daughter of Munshi. However, the plea taken by the defendants is that they had become owners of the suit property on the basis of adverse possession. Thus, it has to be seen as to whether the possession of the defendants qua the suit property was adverse in nature.

It is a settled proposition of law that every co-sharer is deemed to be in possession of the suit property even if only one of the co-sharer may be in actual possession of the property. A co-sharer in order to succeed in establishing that he was in adverse possession of the property has to establish the ouster of the other co-sharers by some overt act.

There is nothing on record to suggest that the suit land had been partitioned by the heirs of Munshi which could show that the plaintiff had been ousted qua his share by the other co-sharers. The suit land was,thus, in possession of all the co-sharers and, hence, it cannot be said that the defendants had become owners of the suit property by way of adverse possession. Plaintiff being class I heir had inherited the suit property to the extent of 1/8th share. The suit filed by the plaintiff on the basis of inheritance cannot be said to be time barred. Succession does not remain in abeyance. After the death of Munshi Ram, all his heirs succeeded to property qua their

respective shares. The defendants had failed to establish that they had become owners of the suit property by way of adverse possession.

The substantial question of law that arises in this appeal is as to whether the judgment and decree passed by the learned first Appellate Court is contrary to the law and evidence on record. The learned First Appellate Court erred in holding that the suit filed by the plaintiff was barred by limitation as the suit for possession on the basis of inheritance has no limitation. Learned First Appellate Court also erred in holding that the defendants had become owner of the suit land on the basis of adverse possession as there was no evidence in this regard on record. The substantial question of law that arises in this case stands answered accordingly. The judgments relied upon by the learned counsel for the respondents fail to advance their case as they are based on different facts.

Hence, this appeal is allowed. The impugned judgment and decree passed by the learned First Appellate Court are set aside. Consequently, the judgment and decree passed by the trial Court are upheld.

(Sabina)
Judge

June 02, 2011

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